

1 Robert R. Pohls (California Bar #131021)
2 **POHLS & ASSOCIATES**
3 12657 Alcosta Boulevard, Suite 150
4 San Ramon, California 94583
5 Telephone: (925) 973-0300
6 Facsimile: (925) 973-0330

7 Attorney for Defendant **State Farm**
8 **Mutual Automobile Insurance Company**

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12

13 ALAN SUKIN,

14 Plaintiff,

15 vs.

16 STATE FARM MUTUAL AUTOMOBILE
17 INSURANCE COMPANY, STATE FARM
18 INSURANCE COMPANIES, THE
19 COMMISSIONER OF THE CALIFORNIA
20 DEPARTMENT OF INSURANCE and DOES
21 1-50, inclusive,

22 Defendants.

Case No. C07-2829-VRW

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S
MOTION TO REMAND**

DATE: September 13, 2007
TIME: 2:00 p.m.
COURTROOM: 6 (Hon. Vaughn R. Walker)

23 I, ROBERT R. POHLS, declare:

24 1. I am an attorney at law, licensed to practice before all the Courts of the State of
25 California and admitted to practice before the United States District Court in and for the
26 Northern District of California. I am the principal of the law firm of Pohls & Associates and lead
27 counsel for defendant State Farm Mutual Automobile Insurance Company ("State Farm") in
28 this action. I also am the custodian of State Farm's original files regarding the benefit claims
that plaintiff Alan Sukin made under State Farm's disability income insurance policy number
HOA476329-05 (the "Policy"). I therefore have personal knowledge of the facts set forth in this
declaration and, if called upon as a witness, could and would competently testify to those facts.

2. The document attached to this declaration as Exhibit 1 is a true and correct copy of a
letter from State Farm's original files regarding the benefit claims that plaintiff made under the

**DECLARATION OF ROBERT R. POHLS IN
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND
Case No. C07-2829-VRW**

1 Policy. That letter is dated March 18, 2003 and, among other things, states: "Mr. Sukin is
2 actually doing somewhat better at work. His behavior is gradually coming under control. He is
3 working extensively with Dr. Rome. Overall, I am optimistic that Mr. Sukin will continue to
4 show some significant improvement."

5 3. The documents attached to this declaration as Exhibit 2 are true and correct copies
6 of phone call records from State Farm's original files regarding the benefit claims that plaintiff
7 made under the Policy. Among other things, those records reflect telephonic communications
8 between State Farm and plaintiff on March 14, 2003, March 21, 2003, June 20, 2003, July 1,
9 2003 and August 5, 2003.

10 4. The document attached to this declaration as Exhibit 3 is a true and correct copy of a
11 letter from State Farm's original files regarding the benefit claims that plaintiff made under the
12 Policy. That letter is dated January 30, 2004 and, among other things, states that an attorney
13 named Alfred Buchta had been "retained to represent the interests" of plaintiff in connection
14 with his benefit claims under the Policy.

15 5. The document attached to this declaration as Exhibit 4 is a true and correct copy of a
16 facsimile transmission from State Farm's original files regarding the benefit claims that plaintiff
17 made under the Policy. That facsimile transmission is dated March 2, 2006 and includes a
18 written claim in which plaintiff asserted, among other things, that State Farm's handling of his
19 claim for benefits under the Policy caused him to incur approximately \$100,000 in attorneys'
20 fees, suffer \$150,000 in damages attributable to high interest rates/credit damage, experience
21 \$300,000 in losses in connection with the sale of unspecified assets, and lose \$150,000 in
22 personal assets and financial strains. indicates that plaintiff made a demand for \$3 million to
23 settle his claims against State Farm.

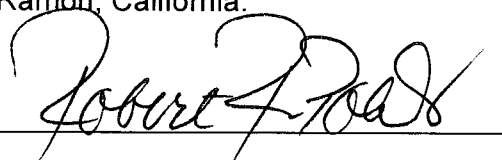
24 6. The documents collectively attached to this declaration as Exhibit 5 are true and
25 correct copies of letters from State Farm's original files regarding the benefit claims that
26 plaintiff made under the Policy. The first is a letter from Mr. Buchta which is dated October 12,
27 2006 and, among other things, offers to resolve plaintiff's claims against State Farm for \$3
28 million. The second is a letter from Lawrence Mann (one of plaintiff's attorneys of record

1 herein) which is dated March 30, 2007 and, among other things, offers to resolve plaintiff's
2 claims against State Farm for \$3.5 million.

3 7. I am informed and believe, and on that basis state, that State Farm is a mutual
4 company which was organized under the laws of the State of Illinois and which has its principal
5 place of business within the State of Illinois. To confirm my belief in that regard, I first
6 conducted an online search of the California Secretary of State's records on August 23, 2007.
7 Among other things, that online search revealed that the California Secretary of State
8 recognizes State Farm as a corporation which was organized under the laws of the State of
9 Illinois and which has its principal place of business in the State of Illinois. To further confirm
10 my belief in that regard, I also conducted an online search of the California Department of
11 Insurance's records on August 23, 2007. Among other things, that online search revealed that
12 the California Department of Insurance recognizes State Farm as an organization which is
13 domiciled in the State of Illinois. True and correct copies of the printed results of those online
14 searches are collectively attached to this declaration as Exhibit 6.

15 I declare under penalty of perjury that the foregoing facts are true and correct.

16 Executed on August 23, 2007 at San Ramon, California.

17
18 

19 ROBERT R. POHLS
20
21
22
23
24
25
26
27
28

Alan Sukin v. State Farm Mutual Automobile Insurance Company, et al.

U.S. District Court, Northern District of California
Case No. C07-2829-VRW

EXHIBIT 1

to the

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

INTEGRATED
PAIN
MANAGEMENT,
INC.

Jacob Rosenberg, M.D., Q.M.E.
Lawrence Weil, M.D., Q.M.E.
Kasra Amirdelfan, M.D., Q.M.E.
Francis Pecoraro, M.D., Q.M.E.
Thomas R. Stephenson, M.D.
Howard Rome, Ph.D., Q.M.E.
Mary Gould, N.P.
Akiko Ogura, N.P.

March 18, 2003

RE: PATIENT: SUKIN, ALLAN
DOI: 10/28/96 Claim #: 78800095290
Physician: Jacob Rosenberg, M.D.
DOS: 03/18/03

SPECIAL REPORT

This represents a review of Dr. Slucky's report of March 12, 2003. Dr. Slucky feels that Mr. Sukin's fusion is solid. We note that Mr. Sukin is actually doing somewhat better at work. His behavior is gradually coming under control. He is working extensively with Dr. Rome. Overall, I am optimistic that Mr. Sukin will continue to show some significant improvement. We are weaning his opiates slowly and trying to control his pain with various medications. We will see him back in clinic in the next several weeks hopefully to continue his weans and continue his medications. At some point in the future, we may wish to pursue the options outlined by Dr. Slucky, including spinal cord stimulation. Mr. Sukin may or may not be a candidate for an intrathecal morphine pump; although, at the current time, he is doing well enough without increasing doses of opiates that I think we will not need to pursue that particular option.

If you have any questions, please do not hesitate to contact me. A total of 15 minutes were spent in the preparation and dictation of this report.

I declare under penalty of perjury that the information accurately described the information provided to me and except as noted herein that I believe it to be true. I further declare under penalty of perjury that I have not violated the provisions of

● 2485 High School Ave., Suite #201, Concord, CA 94520
Tel: 925 691 9806 Fax: 925 691 9807

Work Comp
JAN 26 2004
Carrie

INTEGRATED
PAIN
MANAGEMENT,
INC.
● Jacob Rosenberg, M.D., C.C.E.
Lawrence Weil, M.D., Q.M.E.
Kasra Amirdelfan, M.D., Q.M.E.
Francis Pecoraro, M.D., Q.M.E.
Thomas R. Stephenson, M.D.
Howard Rome, Ph.D., Q.M.E.
Mary Gould, N.P.
● Akiko Ogura, N.P.

RE: SUKIN, ALLAN

PAGE 2

California Labor Code Section 139.3 with regard to the evaluation of this patient, the preparation of the report or the dictation of any procedure.


JACOB ROSENBERG, M.D.

JR:tm

D: 03/18/03

T: 03/23/03

cc: -Royal & Sunalliance, Attn: Carol Porackens; Fax (888) 476-2325-

Milton Katz, Esq.; Fax (415) 440-9965

Andrew Slucky, M.D., Oakland; Fax (510) 444-1397

● 2485 High School Ave., Suite #201, Concord, CA 94520
Tel: 925 691 9806 Fax: 925 691 9807

Work Comp

JAN 26 2004

Carrie

Alan Sukin v. State Farm Mutual Automobile Insurance Company, et al.

U.S. District Court, Northern District of California
Case No. C07-2829-VRW

EXHIBIT 2

to the

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/03

PAGE 3

REGIONAL OFFICE 02
REQ EXAM AYEI Heidi
CLAIM ST-NO 05-07372450

Winkle

ACCUMULATORS*****
LVL KOL TYPE STAT START DATE AMOUNT EARLIEST SVC DT LATEST SVC DT MAN EXAM ID APPR ID*****
RESERVES*****
KOL OPEN CLOSE CHANGE OPEN RESERVE CASE
DATE DATE DATE IND STAT AMOUNT RSRV EXAM ID APPR ID
A 090401 090401 091001 C PREV 198000.00
A 090401 091001 C CURR .00*****
STATISTICAL CLAIM DATA*****
PROC ZIP OWNER/ BANK INST WRT CLM NO.
ST LIENHOLDER ID TYPE AGT AGT TERR CITY CNTY CHILD
05 0 5968 5968 01 000 007 00
PAY MONTHLY AVIATION OCC
MODE PAY IND RATE CODE
Q 0 89*****
RIDERS, ENDORSEMENTS AND EXCLUSIONS*****
FORM NO TYPE DATE
99430 COVERAGE 081800
DESCRIPTION: SOCIAL SECURITY SUPPLEMENT RIDER
99449 COVERAGE 081800
DESCRIPTION: COST OF LIVING ADJUSTMENT BENEFIT RIDER
99004 EXCLU/ENDOR 081800
DESCRIPTION: EXCLUSION ENDORSEMENT
99005 EXCLU/ENDOR 081800
DESCRIPTION: AMENDMENT OF APPLICATION
99487 STAT AMEND 081800
DESCRIPTION: AMENDMENT RIDER - CA STATE DIS INS

HPAS

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 03-14-03
TIME: 14:11

DOS:

RETURN PHONE: 925 855 7375 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: INSURED

PHONE MESSAGE:

I explained to the insured that his policy notes in the Exclusions, Exceptions, and Limitations section that an Injury or Sickness sustained while he is Totally Disabled as a result of a prior Injury or Sickness shall not be deemed to result in Total Disability so long as the prior Total Disability continues.

He said he was thinking of going to a different insurance company. He said he got the policies in case something happened to him. He said the policy to age 65 would be of more use to him than the 3-yr maximum for the Mortgage Disability. He also said he might get an attorney to read the policy so he could be sure of what his rights are under the policy. I noted we would need to speak only with an attorney if there was attorney involvement. I said I'd send a letter regarding our conversation and the exclusion I quoted.

He said he would call Service to request copies of his policies.

ADVISE NO GUARANTEE OF COVERAGE:

RB1A1650
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/06

REGIONAL OFFICE 02
REQ EXAM AYE1 Heidi
CLAIM ST-NO 05-07372449

Winkle

PAGE 34

I spoke with Charlotte. I said the last CF indicated TD to 2/03. She said she believed it because the insured is still TD and will be for some time. She didn't give me an exact date, but she said the insured is definitely TD now. She said she'd talk with the doctor on Monday for more specific info. I asked if I could call Monday afternoon and perhaps get something in writing for our file. She said that would be fine.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

EXAM ID: HQ75

PHONE CALL RECORD

DATE: 03-21-03
TIME: 17:20

DOS:

RETURN PHONE: 925 200 1967 EXT

INCOMING: X
OUTGOING:
PH CONTACT: INSURED

PHONE MESSAGE:

The insured said he hasn't received anything from us in a while. I said the letter I wrote to him was delayed. I noted we haven't received his SSX2. He said he never received one. I said it should have come with his Jan payment. He said he didn't get it and asked me to fax one to him. I suggested that he give me his doctor's name and number in order to expedite the matter. He called the doctor's office to find out which office the doctor was working in today. He called me back and said I should speak with Charlotte at 925-691-9806.

I called the insured back after speaking with Charlotte and said we'd pay from 1/24-3/24. He thanked me. He said his attorney may contact us regarding his AV policy. He said he doesn't understand why he's paying premiums for a policy that he can't use. He also said his agent told him that any money he received from his restaurant fall would be asked to be reimbursed to State Farm. I said I

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:
didn't have a clue what that meant.
JAT

EXAM ID: HQ75

PHONE CALL RECORD

DATE: 01-27-03
TIME: 16:40

DOS:

RETURN PHONE: 925 934 9660 EXT: 3861

INCOMING
OUTGOING X
PH CONTACT ROYAL & SUNALLIANCE

PHONE MESSAGE:

I left a message for Carol Bracken asking if or when we might receive a response to our letter. I left my desk and fax numbers.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

EXAM ID: LZBN

PHONE CALL RECORD

DATE: 01-02-03
TIME: 17:06

DOS:

RETURN PHONE: 925 855 7375 EXT:

INCOMING: X
OUTGOING:
PH CONTACT: ALAN SUKIN-INSURED

PHONE MESSAGE:

Alan called stating he did not receive the check for 8-24/11-24 for \$7500.00.

HB1A1650

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/06

PAGE 31

REGIONAL OFFICE 02
REQ EXAM AVEI Heidi
CLAIM ST-NO 05-07372449

Winkle

EXAM ID: HQ75

DATE: 06-24-03
TIME: 14:43

DOS

RETURN PHONE: 925 691 9806 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: DR. ROSENBERG

PHONE MESSAGE:

I left a message asking if the insured's TD has been extended beyond 5/13.
JATADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 06-23-03
TIME: 14:49

DOS:

RETURN PHONE: 925 691 9806 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: DR. ROSENBERG

PHONE MESSAGE:

Charlotte is out of the office today
JATADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 06-20-03
TIME: 16:27

DOS:

RETURN PHONE: 925 691 9806 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: DR. ROSENBERG

PHONE MESSAGE:

I asked if the insured's TD has been extended beyond 5/13. I was told Charlotte had the chart, but she is out of the office until Monday. Her hours are 7:30-4.
JATADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 06-20-03
TIME: 10:41

DOS:

RETURN PHONE: EXT:

INCOMING: X
OUTGOING:

PH CONTACT: INSURED

PHONE MESSAGE:

The insured asked why his payments stopped again. I said we sent a supplemental form with our last payment and we've not received the form back. He said he immediately gave it to his doctor, but the form evidently is just sitting on the doctor's desk. I asked if he could call the doctor to have the form sent to us. He said the doctor isn't going to do anything special for him. He said he's only one of many patients, and he has no control over what the doctor does.

I said I could understand what he's saying, but I noted we need medical verification of disability in order to make disability payments. He said he doesn't know what else to do than to get an attorney to make the doctor do

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/06

PAGE 32

REGIONAL OFFICE 02
REQ EXAM AYE1 Heidi
CLAIM ST-NO 05-07372449

Winkle

something. He said he really doesn't want to do that.
I asked what doctor has the form. He said the clinic is run by Dr. Rosenberg, but he saw Dr. Stevenson. He said Dr. Stevenson handed the form on over to Dr. Rosenberg. He said we spoke with someone at the doctor's

ADVISE NO GUARANTEE OF COVERAGE:

PRE-EXISTING CONDITION:

office before and wondered if we could do that again.
I said I'd speak with a specialist and perhaps call the doctor. I said I'd give him a call back today. He said he'd try to obtain the name of a contact person at the doctor's office.

JAT

(later)

I left a message that Charlotte from the doctor's office is out until Monday.

I said I would be out of the office on Monday and would try to call

Charlotte on Tuesday.

JAT

PHONE CALL RECORD

EXAM ID: A1N4

DATE: 04-17-03

TIME: 11:35

DOS:

RETURN PHONE: 925 691 9806 EXT:

INCOMING: X

OUTGOING:

PH CONTACT: DR. ROSENBERG'S OFFICE

PHONE MESSAGE:

Charlotte said Jim, the claim handler, had called some time ago asking for a date for disability. She apologized it has taken so long, but she did not have a definitive answer until now. The doctor saw the insured on 4/15/03 and has indicated he will be off work for about four more weeks, until about 5/13/03. I asked if this is a final date or if the insured will be seeing the doctor again. She said it is not a final date, the insured will be seeing the doctor, he continues to see the doctor often. She said she will be sending something in writing to Jim with this information. I told her I will let Jim know.

ADVISE NO GUARANTEE OF COVERAGE:

PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: AYE1

DATE: 04-09-03

TIME: 08:57

DOS:

RETURN PHONE: 925 934 9660 EXT:

INCOMING:

OUTGOING: X

PH CONTACT: CAROL BRACKEN, C/O ROYAL & SUN

PHONE MESSAGE:

I s/w Carol in follow up our numerous requests for information regarding Alan Sukin's claim. They are the WC carrier for his injury. I explained we have been trying to obtain information outlined in our letter for several months. I went over the questions in our letter sent by Jim Tucker. As I was reading each question, Carol indicated to me that Mr. Sukin will never rtw. He is not in voc rehab, not feasible. Also no one else has requested information except for SS (she said this because I had mentioned a previous pc in which she indicated she gets lots of correspondence for this insured). They are now trying to resolve a structure for a settlement and it will be a big one. They have been trying since Aug and Sept of last year. Neither party can come up with a figure to agree upon. There is a big reserve out on this claim. So far they have paid close to 1/2 million. The settlement will be above and beyond that--for future medical bills and compensation.

She continued to say Mr. Sukin has many psych conditions too that are a result of his injury. He diffenently has psych and anxiety. As of 1/03 they

ADVISE NO GUARANTEE OF COVERAGE:

RB1A1650

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/06

PAGE 30

REGIONAL OFFICE 02
REQ EXAM AYE1 Heidi Winkle
CLAIM ST-NO 05-07372449

said he could not handle that right now.
He said on top of the back pain, he also has incontinence problems. He said that his pain doctor is in the process of trying to get an MRI approved through Blue Shield, his medical carrier.
I again expressed the need for his tax returns. He said he still did not want to send them to us. He asked that we locate where it is required of him to provide the returns and to have a supv. call him back to explain it to him. I told him I would have the claim reviewed and that if we still needed the returns, a supervisor would call him back.

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 07-22-03
TIME: 11:20

DOS:

RETURN PHONE: 925 855 7375 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: INSURED

PHONE MESSAGE:

I left a message for the insured that I was returning his phone call.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 07-01-03
TIME: 12:08

DOS:

RETURN PHONE: EXT:

INCOMING: X
OUTGOING:
PH CONTACT: INSURED

PHONE MESSAGE:

The insured said he has his CF completed and he will send it to us. He said his doctor has suggested he try a pain "pump" to alleviate the disabling effects of the back surgery he's had. He asked what his AV policy excludes. I read the exclusion endorsement to him. He asked me to send the language to him in a letter for his reference. I explained that his AV has a specific exclusion; other illnesses and/or injuries might be considered with proper proof of loss and as long as his policy remains in effect.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 06-27-03
TIME: 14:22

DOS:

RETURN PHONE: 925 691 9806 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: DR. ROSENBERG

PHONE MESSAGE:

Charlotte said the insured will see the doctor next week. The doctor has been out of the office. That's why the form hasn't been sent. The insured is considered TD until seeing the doctor again.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/06

PAGE 29

REGIONAL OFFICE 02
REQ EXAM AYE! Heidi
CLAIM ST-NO 05-07372449

Winkle

DOS:

RETURN PHONE: 408 244 4175 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: BRENDA - REST. MAIN OFFICE

PHONE MESSAGE:

S/w Brenda. She said Alan did file a claim in March of 2003 for a slip and fall injury. She said their office does not have the details, that we would need to contact their insurance company, Golden Eagle Insurance at 800-537-8855. She said the claim rep handling the claim is Sherry Prince.

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: CE64

DATE: 08-05-03
TIME: 10:40

DOS:

RETURN PHONE: 925 828 9380 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: FRANKIE JONNIE LUIGI TOO

PHONE MESSAGE:

Called and spoke with the manager who said to call Brenda at the main office at 408-244-4175 for additional information.

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: CE64

DATE: 08-05-03
TIME: 10:33

DOS:

RETURN PHONE: EXT:

INCOMING:
OUTGOING: X
PH CONTACT: INSURED

PHONE MESSAGE:

I called the insured to f/up on the 7-14-03 letter requesting the tax returns. Alan said that he was not going to be sending them in because he felt it was confidential information and did not feel we needed them. He asked where in the policy it stated we could ask for tax returns. I told him we needed them for income verification. He said that his wife works and that he has money coming in from dividends and that it would not show he was making less money now. He said that up until June of 2003 he was still making about what he was making before he could not work, but that he shut down his business, TECHWATCH INC. in June of 2003. He explained that when he was working he had 30 employees working for him. He said now there are no employees. He said his tax returns will show an income of 300K. He said he is still in so much pain. He said that they are considering giving him a pain pump in his back that will infuse medication directly on his spine. He has heard from people that have had the pump that it works really well and he is hoping it will work for him.

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

I asked him about the slip and fall he had at a restaurant. He said that it happened in 12/02, he did not have the exact date, and that it was at a restaurant called Frankie and Luigis in Dublin, CA. He said he walked into the bathroom, where there was no sign up stating the floor was wet, and he slipped and fell onto his back. He said that he filed a claim with them, was given some claim forms to complete, but has not pursued the claim. I asked if he had an attorney for the claim. He said no. He said that he was completely bed ridden from January through March of 2003 due the to slip and fall making his back pain worse. He said that he does not have the strength right now to pursue a claim for his injuries. I asked if the slip and fall caused that much pain, wouldn't you want to pursue what is owed to you? He

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
CLAIM RECORD FORM - HEALTH
10/25/06REGIONAL OFFICE 02
REQ EXAM AVE1 Heidi
CLAIM ST-NO 05-07372449

Winkle

PAGE 30

said he could not handle that right now. He said on top of the back pain, he also has incontinence problems. He said that his pain doctor is in the process of trying to get an MRI approved through Blue Shield, his medical carrier. I again expressed the need for his tax returns. He said he still did not want to send them to us. He asked that we locate where it is required of him to provide the returns and to have a supv. call him back to explain it to him. I told him I would have the claim reviewed and that if we still needed the returns, a supervisor would call him back.

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 07-22-03
TIME: 11:20

DOS:

RETURN PHONE: 925 855 7375 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: INSURED

PHONE MESSAGE:

I left a message for the insured that I was returning his phone call.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 07-01-03
TIME: 12:08

DOS:

RETURN PHONE: EXT:

INCOMING: X
OUTGOING:
PH CONTACT: INSURED

PHONE MESSAGE:

The insured said he has his CF completed and he will send it to us. He said his doctor has suggested he try a pain "pump" to alleviate the disabling effects of the back surgery he's had. He asked what his AV policy excludes. I read the exclusion endorsement to him. He asked me to send the language to him in a letter for his reference. I explained that his AV has a specific exclusion; other illnesses and/or injuries might be considered with proper proof of loss and as long as his policy remains in effect.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

EXAM ID: HQ75

DATE: 06-27-03
TIME: 14:22

DOS:

RETURN PHONE: 925 691 9806 EXT:

INCOMING:
OUTGOING: X
PH CONTACT: DR. ROSENBERG

PHONE MESSAGE:

Charlotte said the insured will see the doctor next week. The doctor has been out of the office. That's why the form hasn't been sent. The insured is considered TD until seeing the doctor again.
JAT

ADVISE NO GUARANTEE OF COVERAGE:
PRE-EXISTING CONDITION:

PHONE CALL RECORD

Alan Sukin v. State Farm Mutual Automobile Insurance Company, et al.

U.S. District Court, Northern District of California
Case No. C07-2829-VRW

EXHIBIT 3

to the

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

THE **BUCHTA**
LAW OFFICES

350 RAILROAD AVENUE • SUITE 210 • DANVILLE • CA • 94526
P.O. BOX 1070 • DANVILLE • CA • 94526
TELEPHONE (925) 743-8900 • FACSIMILE (925) 855-9996
EMAIL: ABUCHTA@PACBELL.NET

ATTORNEY AT LAW

ALFRED H. BUCHTA

January 30, 2004

Jim Tucker
State Farm Insurance Companies
P.O. Box 9403
Greeley, CO 80633-9403

Re: Policy: HOA476329 05
Claim: 05 HO7372450
Policy: HOA474315 05
Claim: 05 HO7372449
Loss Date: June 25, 2001
My Client: Alan J. Sukin

Dear Mr. Tucker:

Please be advised that I have been retained to represent the interests of Alan J. Sukin regarding his claims for disability benefits pursuant to the above-referenced policies.

I have reviewed your letter dated March 18, 2003, which I interpret to be your denial letter regarding my client's benefits pursuant to his disability policy (HOA476329-05). After reading your letter, I am still a bit vague on the basis for your denial of benefits pursuant to the disability policy cited above. I am attaching a copy of your letter of March 18, 2003, for your reference.

In your second paragraph, you quote a portion of the guaranteed renewal disability income policy after you say that your policies limit total disability benefits to the amount payable for a single cause. The quoted portion of that policy apparently states that "for the purposes of this policy Injury or Sickness sustained while you are Totally Disabled as a result of a prior Injury or Sickness shall not be deemed to result in Total Disability so long as the prior Total Disability continues."

Are you saying that the fact that Mr. Sukin is receiving benefits pursuant to the Mortgage Disability Income policy that he fulfills the definition of "Total Disability" for purposes of the guaranteed renewable disability income policy?

Furthermore, are you contending that the prior low back injury qualifies as a "prior Injury or Sickness?"

Jim Tucker
January 30, 2004
Page 2

Please provide me with your responses to these questions and any additional information you may have concerning Mr. Sukin's qualification for benefits pursuant to the Guaranteed Renewable Disability Income policy. Furthermore, please confirm that you are denying benefits pursuant to that policy.

I thank you in advance for your courtesy and cooperation in this regard.

Very truly yours,

ALFRED H. BUCHTA

AHB/ss
cc: Alan J. Sukin

Alan Sukin v. State Farm Mutual Automobile Insurance Company, et al.

U.S. District Court, Northern District of California
Case No. C07-2829-VRW

EXHIBIT 4

to the

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**



A facsimile from

TEK

Alan J. Sukin
100 Light Court, Folsom, CA 95630
Tel. 916-987-1341, Fax. 800-304-8187

To: Jared Salas
State Farm Insurance
Health Operation Center West
PO BOX 9404
Greeley, CO 80633

Date: 3/2/2006

RE: Policy # A4763290505

Comments: Recovery of Losses due to denying disability claim for several years

Alan J. Sukin

1 State Farm Insurance

2 Health Operation Center West

3 PO BOX 9404

4 Greeley, CO 80633

5
6 RE: Alan J. Sukin, 100 Light Court,)
7 Folsom, CA 95630, Represented by Self)
8)
9)

10 Claim: Recovery of Losses due)
11 to denying disability benefits)
12 for several years.)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)

23 With respect to my Disability Income Policy #A4763290505, my family and I were victimized by my own
24 insurance company, State Farm Insurance in denying my claim after (4) four days after evaluation of the
25 original submittal date of the claim. After I retained an attorney the claim was re-opened, and took
several years to resolve while my financial situation and associated strain on my wife and children was
devastating and irrevocable.

I bought this policy in order to protect my family and me against disaster which ultimately occurred due to
my change in health, and is now permanent.

The fact that State Farm held off from paying out my Disability Income for several years -- contributed to
damages including but not limited to: irrevocable strain on family and I, personal assets having to be sold
way below value, both my wife and my credit being damaged for the next seven years (having to pay high

1 interest rates on mortgage, vehicles, etc.), Trust/Capital Gains from my father which destroyed a life time
2 of savings from my parents which was suppose to be inheritance, and (1/3) one-third contingent attorneys
3 fees and expenses to recover the disability benefits - "Insurance Bad Faith".
4

5 ESTIMATE

- 6
- Contingent Attorneys Fees as a cost to me as the insured for the "Insurance Bad Faith" of (1/3) one-third of the final re-payment of benefits - Approximately \$100K
 - High Interest Rates / Credit Damage (Past/Present/Future) Due to Damages - \$150K
 - Trust - Principal less capital gains taxes permanent loss, and loss of unknown growth of investments if not sold (Approximately \$300K)
 - Loss on Personal Assets and Financial / Strain on Family and Self \$150K
- 8

9 I would like to attempt to settle this claim representing my self for compensatory and punitive damages.
10
11
12
13

14 Dated this 2nd day of March, 2006

15
16
17
18 Alan J. Sukin
19
20
21
22
23
24
25

Alan Sukin v. State Farm Mutual Automobile Insurance Company, et al.

U.S. District Court, Northern District of California
Case No. C07-2829-VRW

EXHIBIT 5

to the

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

ATTORNEY AT LAW

ALFRED H. BUCHTA

October 12, 2006

Heidi Winkle
Health Claim Team Leader
Health Insurance Department
State Farm Mutual Automobile Insurance Company
PO Box 339403
Greeley, CO 80633-9403

Re: My Client: Alan Sukin
Policy No: H0A476329-05
Claim No: 05-H07381487
Date of Loss: December 27, 2002
Claim No: 05-H07372450
Date of Loss: June 25, 2001

Dear Ms. Winkle:

State Farm has two obligations to Alan Sukin relative to his disability claims. First, he is receiving benefits in the amount of \$9,000+ per month which are payable until he reaches the age of 65 years. Furthermore, Mr. Sukin has rights with regard to a bad faith claim based on State Farm's failure and refusal to make disability payments of \$9,000 to Mr. Sukin for a period of over two years. Although State Farm finally made all payments due to Mr. Sukin, those payments should have begun in March of 2003; however, the payments did not begin until August of 2005, a period of twenty nine months. State Farm's failure to make the \$9,000 per month payments to Mr. Sukin for a period of over twenty nine months resulted in substantial negative consequences to Mr. Sukin and his family. We will discuss these consequences in some detail later in this letter.

Background: On October 13, 1999, Mr. Sukin purchased a mortgage disability policy with benefits of \$2,500 per month. Then on August 18, 2002, Mr. Sukin bought an additional disability policy with benefits of \$9,000 a month which included a low back exclusion. The next year on June 25, 2001, Mr. Sukin underwent a lumbar fusion and as a result he began receiving mortgage disability payments in the amount of \$2,500 per month. There was a time limit on this policy of three years. Then the next year on December 27, 2002, Mr. Sukin unfortunately slipped and fell on a wet floor in a restaurant thereby injuring his neck and upper back. For a period of time after that slip and fall incident, Mr. Sukin was bedridden due to his new set of injuries. Then on March 15, 2003, Mr. Sukin telephoned State Farm reporting his new injury and requesting that benefits be paid pursuant to the second disability policy. At that time Mr. Sukin spoke to Jim Tucker a Health Claim Examiner with State Farm. Shortly after that telephone conversation Mr. Tucker wrote a letter to Mr. Sukin on March 18, 2003, setting forth a convoluted explanation of why State Farm would not pay benefits for "any injuries

rec'd 10/16/06
CT 10/16/06

October 12, 2006

Page 2

associated with your reported accident of December 27, 2002." Mr. Tucker gave the two policies a tortured interpretation. Mr. Tucker states in essence that since Mr. Sukin was already on disability under the mortgage disability policy he could not receive benefits under a separate second disability policy. I am confident that you will agree this is illogical to the extreme. Notwithstanding, no benefits were paid to Mr. Sukin. A copy of Mr. Tucker's March 18, 2003 letter is attached as exhibit 1.

In December of 2003, Mr. Sukin hired myself to assist him with a few different legal matters and after reviewing Mr. Tucker's letter, I wrote to him on January 30, 2004, asking him to explain his tortured interpretation of the two policies. A copy of my letter is attached as exhibit 2. Apparently, a letter was written later by Marylyn Robins on March 15, 2004, again reiterating the same tortured reasoning for failing to provide benefits to Mr. Sukin. A copy of Ms. Robin's letter dated March 15, 2004, is attached as Exhibit 3. It is important to note at this point that based on a review of my file, I never received Ms. Robbins' March 15, 2004 letter; however, that letter was later provided to me by State Farm. In Ms. Robbins' letter State Farm continued with their denial of any disability payments to Mr. Sukin. Throughout the remainder of 2004, State Farm failed to carry out any further investigation or inquiry concerning Mr. Sukin's disability claim concerning his neck and upper back.

We then again renewed our claim for disability benefits under the second disability policy, when I forwarded further documentation on April 4, 2005. A copy of that letter is attached and marked as Exhibit 4.

Then this case was transferred to Heidi Winkle who communicated with me on June 16, 2005 and a copy of her letter is enclosed as Exhibit 5. In that letter, she contended that Dr. Rosenberg maintained that he no longer treated Mr. Sukin. However, on July 14, 2005, Dr. Rosenberg prepared a report stating that Mr. Sukin was, in fact, disabled due to his chronic pain disorder associated with his cervical spine. A copy of Dr. Rosenberg's report is attached as Exhibit 6. On July 9, 2005, I provided you with a complete package of documentation that substantiated our claim for disability benefits relating to areas other than Mr. Sukin's lumbar spine. A copy of that package is marked exhibit 7. Then it was not until July 27, 2005, that Jared Salas of State Farm wrote to me indicating that you would attempt to handle this matter as quickly as possible.

Finally, State Farm made good on their legal duty to Mr. Sukin and forwarded a check for all amounts owed, dated August 26, 2005. The check is in the amount of \$271,612.15 and a copy of that check is attached hereto and marked exhibit 9.

Thereafter, my client representing himself, contacted your office with a claim for damages arising from the failure of State Farm to deal with this case in good faith. On April 27, 2006, Heidi Winkle wrote back to Mr. Sukin indicating that State Farm "timely honored your claim for disability stemming from your neck, arm and shoulder." Furthermore, it was represented in your April 27, 2006, letter that the State Farm was not notified of the disability claim to the neck and upper back until "April 2005". As set

October 12, 2006

Page 3

forth above, the contention that State Farm was not notified until April 2005 is a gross misstatement. This is a further demonstration of State Farm's refusal to accept responsibility for compensating Mr. Sukin. The April 27, 2006 letter is attached and marked Exhibit 9.

LEGAL ANALYSIS:

Every insurance contract contains an implied covenant of good faith and fair dealing. This covenant imposes a duty on the insured to act in good faith and fairly towards its insured in handling their claim. Finally every insurance contract imposes a responsibility on the insurance company to meet the reasonable expectations of the policy holder. Gruenberg v. Aetna Ins. Co. (1973) 9 Cal 3rd 566, 108CR480. Looking at the timeline of the events of this case compels the conclusion that Mr. Sukin reasonably expected that if he was disabled from a cause other than his low back then he would have coverage pursuant to the disability policy in the amount of \$9,000 a month. Simple logic compels the conclusion that since the mortgage disability policy of \$2,500 was purchased on October 13, 1999 and the disability policy was purchased on August 18, 2000, Mr. Sukin was specifically purchasing two different policies to cover him for two different disabilities. The mortgage disability policy would protect him for disability for all causes whereas the second disability policy would protect him for disability relating to injuries other than his low back. The purchase of the disability policy on August 18, 2000 was specifically for the purpose of protecting himself and his family from the adverse economic consequences of a disability not related to his low back. That is exactly what happened and it certainly was Mr. Sukin's "reasonable expectations" that he would be covered as a result of the non-low-back injuries sustained by him when he slipped and fell in the restaurant on December 27, 2002.

As you certainly know, State Farm has the burden of proving that a policy excludes a specific condition. See State Farm Mut. Auto. Ins. Co. v. Partridge (1973) 10 Cal 3rd 94 109CR811. The letter from Mr. Tucker of March 18, 2003 and the letter from Marylyn Robins dated March 15, 2004 attempted to suggest an exclusion for the disability policy because Mr. Sukin was deemed disabled under the mortgage policy. Any reasonable party reading these two contracts would not interpret the contract to say that disability under one policy is considered a disability under the second policy. Both policies stand alone. State Farm stood by the reasoning of Mr. Tucker and Ms. Robins for over two years, despite the illogical nature of their reasoning. That amounts to bad faith.

DELAY: State Farm had a duty to fully investigate this claim and they were required to inquire into all possible bases that might support Mr. Sukin's claim. State Farm cannot deny a claim without thoroughly investigating the basis for its denial. Egan v. Mutual of Omaha Ins. Co. (1979) 24 Cal Ap 3rd 809 (157CR482). Any reasonable delay in investigating a claim alone provides sufficient grounds to support a general and punitive damage award. Canne V. Connecticut General Life Ins. Co. (9th CIR., 1988) 867F.2nd 489.

It is also important to note that the eventual payment of the benefits due to the insured as in this case, does not prevent Mr. Sukin from bringing law suit against State Farm and that is what we plan to do if we cannot resolve this matter out of court. See Sprague v. Equifax, Inc. (1985) 166 Cal Ap 3rd 1012, 213CR69.

As you certainly know any ambiguity or uncertainty will be resolved against the insurer in favor of the policy holder. Gray v. Zurich Ins. Co. (1966) 65 Cal 2nd 263, 54 Cal Reporter 104. At the very best, the arguments made by Mr. Tucker and Ms. Robins for two years were based on ambiguous and uncertain language in the two policies. In fact, State Farm finally concluded (I assume with competent legal advise) that Mr. Sukin was in fact entitled to the benefits of the \$9,000 disability policy. Therefore even State Farm has now resolved the ambiguity and uncertainty in these two policies in favor of Mr. Sukin. This resolution in favor of Mr. Sukin should have occurred early in 2003 instead of later in 2005.

DAMAGES: Mr. Sukin may recover all damages proximately caused by State Farms breach of their duty of good faith and fair dealing. These damages include consequential loss, loss of use of the insurance proceeds, general damages, attorney's fees and exemplary damages. Brandt v. Superior Court (1985) C37 Cal 3rd 813, 210 CR211. In this case Mr. Sukin has suffered damages in each category listed above. Mr. Sukin has *economic damages* in the form of attorney's fees and cost to collect the arrearages owed to Mr. Sukin in the amount of \$90,837.50.

Loss of use of the insurance proceeds: As a result of the failure to pay the benefits due to Mr. Sukin State Farm additionally caused damages in that Mr. Sukin was forced to sell his home at a decreased value since he could not afford to make the house payments without the benefit of the \$9,000 a month payments.

Emotional Distress: As a result of the failure of State Farm to make the appropriate payments Mr. and Mrs. Sukin fell behind on their payments for their cars and their house and as a result their credit rating has plummeted. They are forced to pay additional interest on their present house in Folsom California due to their low credit rating. Further emotional distress arose from the stress on the marriage between Mr. Sukin and his wife Leslie. Substantial sums were spent on physiologist and those figures can be produced if necessary. Both of Mr. Sukins' children, Brandon and Jordan were forced to move from one school to another and then move again to another school in Folsom. It was difficult enough on the children to exist in a family where dad is disabled and on pain medication, but to throw their lives into a state of turmoil as a result of the added factor of financial deprivation was very difficult for the children.

Needless to say Mr. Sukin suffered substantial emotional distress with having to sell their home and their cars and move twice as a result for their inability to make their house payment. We believe that a payment from State Farm in the amount of \$500,000 would be a reasonable sum to compensate them for the distress that Mr. Sukin and his family were forced to endure as a result of State Farms failure to comply with their duty of good faith. Finally it should be noted that we are not contending that State Farm intended to harm Mr. Sukin. However the California case law does not require an intent

October 12, 2006

Page 5

to harm as a prerequisite to establishing a valid case for breach of State Farms duty of good faith and fair dealing.

The simple fact is that State Farm failed for twenty nine months to make the payments that were due to Mr. Sukin and they failed to make these payments based on their failure to properly investigate and analyze this case. The fact that State Farm came to the realization that they did in fact owe the money and finally paid it does not relieve them of liability for the damages suffered by Mr. Sukin as a result of their earlier failures.

SETTLEMENT OF MR. SUKINS \$9,000 A MONTH PAYMENTS.

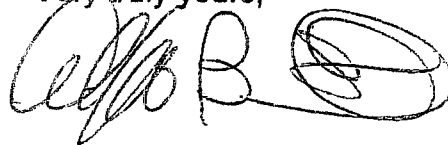
At this time Mr. Sukin is prepared to accept a lump sum payment from State Farm in exchange for waiver for his right to receive monthly installment payments of \$9,000 until he reaches the age of 65.

Since Mr. Sukins birth date is March 4, 1967 he will turn 65 on March 4, 2032 consequently there are twenty five years and five months between November 4, 2006 and March 4, 2032 and that would be 305 months. Multiplying 305 times \$9,000 we have a product of \$2,745,000. For the sake of ease of calculation I have not taken into consideration the contractual inflation aspect of this case nor have I reduced the amount of present value in that I believe inflation and the present value factor offset each other.

Therefore we have a total claim in this case of \$3,245,000 if we can resolve this case within the next thirty days, Mr. Sukin would be willing to accept an even \$3,000,000 and give State Farm a full final release of all obligations on the part of State Farm relating to any and all disability and bad faith action possessed by Mr. Sukin.

Please have this matter evaluated at your earliest convenience and contact me with your response within 30 days. I look forward to a prompt, fair and equitable resolution of these issues.

Very truly yours,



ALFRED H. BUCHTA

AHB/mls
Enclosure
cc: Alan Sukin

RAY BOURHIS ASSOCIATES

Specializing in Insurance Law

March 30, 2007

www.InsuranceConsumers.com

www.RayBourhis.com

VIA FACSIMILE (970) 395-6342

ATTN: Ms. Sharon Kidwell-Tynan, Team Leader
STATE FARM INSURANCE COMPANY
Greeley, Colorado

Re: Our Client/Your Insured: Alan Sukin
Policy No.: HOA476329

Dear Ms. Kidwell-Tynan:

Please be advised that our office represents Alan Sukin with regard to his claim in this matter. Attached please find our Authorization of Attorney Representation.

When you spoke with my assistant, Mary Martin, you advised that you required the Authorization of Attorney Representation along with the amount of our demand on behalf client which is \$3.5 million dollars.

As Ms. Diane Tallman is out of the office until Monday, please have her supervisor, Ken Starks, Manager contact our office between 2PM and 3PM (PST) for a conference call between my partner, Ray Bourhis and myself to immediately discuss this claim.

Thank you for your anticipated courtesy and cooperation in this matter.

Sincerely yours,

BOURHIS & MANN

By: 
Lawrence Mann

LM:mmm
Enclosure

28D
3/30/07
LL

Alan Sukin v. State Farm Mutual Automobile Insurance Company, et al.

U.S. District Court, Northern District of California
Case No. C07-2829-VRW

EXHIBIT 6

to the

**DECLARATION OF ROBERT R. POHLS
IN OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

California Business Portal

Secretary of State DEBRA BOWEN

DISCLAIMER: The information displayed here is current as of AUG 17, 2007 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY		
Number: C0129473	Date Filed: 6/18/1928	Status: active
Jurisdiction: ILLINOIS		
	Address	
ONE STATE FARM PLAZA		
BLOOMINGTON, IL 61710-0001		
Agent for Service of Process		
DANA SILVER		
3345 MICHELSON DRIVE 4TH FLOOR		
IRVINE, CA 92612		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

Company Profile

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

ONE STATE FARM PLAZA

BLOOMINGTON, IL 61710-0001

Agent for Service of Process

DANA SILVER, 3345 MICHELSON DRIVE 4TH FLOOR IRVINE, CA 92612

Unable to Locate the Agent for Service of Process?

Reference Information

NAIC #:	25178
NAIC Group #:	0176
California Company ID #:	0948-0
Date authorized in California:	June 18, 1928
License Status:	UNLIMITED-NORMAL
Company Type:	Property & Casualty
State of Domicile:	ILLINOIS

Lines of Insurance Authorized to Transact

The company is authorized to transact business within these lines of insurance. For an explanation of any of these terms, please refer to the glossary.

AUTOMOBILE
COMMON CARRIER LIABILITY
DISABILITY
FIRE
LIABILITY
MARINE
MISCELLANEOUS
PLATE GLASS

Company Complaint Information

[Company Enforcement Action Documents](#)
[Company Performance & Comparison Data](#)
[Composite Complaint Studies](#)

Want More?

[Help Me Find a Company Representative in My Area](#)

[Financial Rating Organizations](#)

Last Revised - July 27, 2007 11:17 AM
Copyright © California Department of Insurance